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April 17, 2019

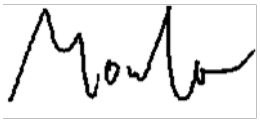
Fifth Court of Appeals
600 Commerce Street, Suite 200
Dallas, TX 75202

Re: *Ex parte Rion*, No. 05-19-00280-CR (Tex.App.-Dallas);
***State v. Rion*, No. WX18-90101-L & F15-72104 (Crim. Dist. Ct. No. 5).**
Via efile

Dear Clerk of Court:

As a follow-up to the Motion to Abate the Appeal for Additional Time for the Trial Court to File the Requested Findings of Fact and Conclusions of Law that I filed on April 11, 2019, attached is the proposed Findings of Fact and Conclusions of Law that the State (which was the prevailing party) submitted to the district court. This letter informs the Court that the ground for the Motion to Abate is moving forward quickly and I expect the Court to sign the attached document (or something close to it) soon.

Sincerely,



Michael Mowla

Attachment

CC: Dallas County District Attorney's Office by Texas efile to
brian.higginbotham@dallascounty.org and DCDAAppeals@dallascounty.org

WX18-90101-L
F15-72104-L

THE STATE OF TEXAS	§	IN THE CRIMINAL
	§	
v.	§	DISTRICT COURT NO. 5
	§	
CHRISTOPHER RION	§	DALLAS COUNTY, TEXAS

STATE'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

THE STATE OF TEXAS submits the following proposed findings of fact and conclusions of law in response to Defendant Christopher Rion's "Pretrial Application for Writ of Habeas Corpus Seeking Relief from Double Jeopardy and Motion for Continuance (in the Alternative)" (the "Application"), which was filed on September 28, 2018, and Rion's "Supplemental Brief Based on *State v. Waters*" (the "Supplemental Brief"), which was filed on November 2, 2018.

HISTORY OF THE CASE

1. Because of Rion's involvement in a severe traffic collision, a grand jury returned two indictments against him: one for *aggravated assault with a deadly weapon* for causing bodily injury to Claudia Loehr in the instant case (the "aggravated-assault case") and another for *manslaughter* for causing the death of Claudena Parnell in cause no. F15-71618-L (the "homicide case").

2. Both indictments were filed in this Court, but the cases were not joined for trial.

3. While the instant aggravated-assault indictment remained pending, this Court conducted a jury trial in the homicide case on April 24–26, 2018. This Court's charge instructed the jury on manslaughter as well as the lesser-

included offense of criminally negligent homicide. The jury found Rion not guilty of both offenses, and this Court entered a judgment of acquittal.

4. The aggravated-assault indictment, however, remains pending, and in response, Rion filed the Application and the Supplemental Brief.

5. The State filed a response (the "State's Response") on January 30, 2019.

6. This Court denied habeas relief on February 1, 2019.

Issues Raised in Application

7. Rion presents his argument to this Court in seven parts: (1) that the Application was timely filed; (2) about Double Jeopardy in general; (3) that collateral estoppel is embodied in Double Jeopardy; (4) that jeopardy attached in the prior homicide case; (5) that collateral estoppel bars the State from prosecuting him in the instant aggravated-assault case; (6) that he could not have committed aggravated assault with a deadly weapon because the manner and means of his use of his vehicle could not have facilitated any felony; and (7) that he requested for both cases to be tried in one proceeding but that his request was denied.

General Findings

8. The Court takes judicial notice of the entire contents of the Court's file in the aggravated-assault case and the homicide case.

9. The Court takes judicial notice of the entire contents of the Court's file in cause no. WX18-90101-L.

10. The Court takes judicial notice of the jury trial in the homicide case that took place on April 24–26, 2018.

Specific Findings

Part 1

11. In part 1, Rion claims that the Application was timely filed, and the State does not disagree.

12. The Court finds that the Application was timely filed.

Parts 2–5

13. In parts 2–5, Rion asserts his view of the law concerning Double Jeopardy—that collateral estoppel is embodied within Double Jeopardy, that jeopardy attached in the prior homicide trial, and that collateral estoppel bars the State from prosecuting him in the instant aggravated-assault case.

14. In response, the State argues that neither the doctrine of collateral estoppel nor Rion's right to be free from double jeopardy bar the State from pursuing this prosecution.

Double Jeopardy and Collateral Estoppel

15. The Double Jeopardy Clause of the Fifth Amendment provides that no person shall "be subject for the same offence to be twice put in jeopardy of life or limb." U.S. Const. amend. V. It is made applicable to the States through the Due Process Clause of the Fourteenth Amendment. U.S. Const. amend. XIV; *Benton v. Maryland*, 395 U.S. 784, 787 (1969). Texas law provides a similar protection, although it is identical to that under federal law. Tex. Const. art. I, § 14; Tex. Code Crim. Proc. art. 1.10; *Hiatt v. State*, 319 S.W.3d 115, 125 (Tex. App.—San Antonio 2010, pet. ref'd) (citing *Stephens v. State*, 806 S.W.2d 812, 815 (Tex. Crim. App. 1990)).

16. Double jeopardy has several facets, one of which is collateral estoppel—also called "issue preclusion." *See, e.g., Ex parte Taylor*, 101 S.W.3d 434, 441 (Tex. Crim. App. 2002).

17. Collateral estoppel "means simply that when an issue of ultimate fact has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit." *Ashe v. Swenson*, 397 U.S. 436, 443 (1970).

18. In *Ashe v. Swenson*, the Supreme Court held that the doctrine of collateral estoppel is embodied in the Fifth Amendment guarantee against double jeopardy. *Id.* at 445.

19. When a defendant, once acquitted, wishes to invoke the protection of double jeopardy based on the collateral estoppel of a particular issue, the court must

"examine the record of a prior proceeding, taking into account the pleadings, evidence, charge, and other relevant matter [sic], and conclude whether a rational jury could have grounded its verdict upon an issue other than that which the defendant seeks to foreclose from consideration." *Id.* at 444.

20. In the facts leading up to Ashe's case, several robbers committed the robbery of several complainants. Ashe was accused of being one of the robbers, although he was ultimately acquitted. In his trial, the only issue that could have rationally caused the acquittal was identity. *Id.* at 445. As the Court observed, "[t]he single rationally conceivable issue in dispute before the jury was whether [Ashe] had been one of the robbers[;]" there was no suggestion that a robbery had not occurred or that the complainant was not the victim of that robbery. *Id.* The doctrine of collateral estoppel, then, insulated Ashe from having to litigate that identity issue in any future trial. *Id.* He could not be tried for robbing any of the other complainants.

21. Later caselaw has elaborated upon how to conduct a collateral-estoppel analysis in a criminal case.

22. A defendant making a collateral-estoppel claim bears the burden "to demonstrate that the ultimate issue whose relitigation he seeks to foreclose was actually decided in the first proceeding." *State v. Sauceda*, 980 S.W.2d 642, 650 (Tex. Crim. App. 1998) (citing *Schiro v. Farley*, 510 U.S. 222, 233 (1994); *Dowling v. United States*, 493 U.S. 342, 347 (1990)) (internal quotations and brackets omitted).

23. A fact is the *ultimate issue* if it was "the only rationally conceivable issue in dispute in the first prosecution . . . ." *See York v. State*, 342 S.W.3d 528, 545–46 (Tex. Crim. App. 2011).

24. However, "when a fact is not necessarily determined in the former trial, the possibility that it may have been does not prevent re-examination of that issue." *Guajardo v. State*, 109 S.W.3d 456, 462 n.16 (Tex. Crim. App. 2003) (quoting *Ladner v. State*, 780 S.W.2d 247, 254 (Tex. Crim. App. 1989)).

25. The test for collateral estoppel is "whether the verdict was *necessarily* grounded upon an issue which the defendant seeks to foreclose from litigation, not whether there is a *possibility* that some ultimate fact has been determined adversely to the State." *Id.* (quoting *State v. Nash*, 817 S.W.2d 837, 840 (Tex. App.—Amarillo 1991, pet. ref'd)).

26. General verdicts, then, can pose complications, because they "frequently make[] it difficult to determine precisely which historical facts a jury found to support an acquittal." *Ex parte Watkins*, 73 S.W.3d 264, 269 (Tex. Crim. App. 2002).

27. Therefore, a collateral-estoppel claim following a general verdict must meet a demanding standard:

> In each case, courts must review the entire trial record, as well as the pleadings, the charge, and the arguments of the attorneys, to determine with realism and rationality precisely which facts the jury necessarily decided and whether the scope of its findings regarding specific historical facts bars relitigation of those same facts in a second criminal trial.

Clewis v. State, 222 S.W.3d 460, 465 (Tex. App.—Tyler 2007, pet. ref'd) (citing *Watkins*, 73 S.W.3d at 268) (internal quotation omitted).

28. The scope of facts that were actually litigated determines the scope of the factual finding covered by collateral estoppel. *Murphy v. State*, 239 S.W.3d 791, 795 (Tex. Crim. App. 2007). The very fact or point at issue in the pending case must have been determined in the prior proceeding. *Id.*

29. For collateral estoppel to apply, the issue must be "precisely" the same in both cases, which limits the doctrine to "cases where the legal and factual situations are identical." *Ex parte Taylor*, 101 S.W.3d 434, 441 (Tex. Crim. App. 2002) (internal quotations and citations omitted).

30. To meet his burden, then, "the defendant must 'prove both that the issues are identical and that in reaching their verdict of not guilty in the first trial[,] the jury had to resolve the contested fact in favor of the defendant.'" *Ex parte McNeil*, 223 S.W.3d 26, 30 (Tex. App.—Houston [1st Dist.] 2006, pet. ref'd) (quoting *Ladner*, 780 S.W.2d at 258).

Manslaughter, Criminally Negligent Homicide, and Aggravated Assault

31. A person commits manslaughter if he recklessly causes the death of an individual, and he commits criminally negligent homicide if he causes the death of an individual by criminal negligence. Tex. Penal Code §§ 19.04 (manslaughter), 19.05 (criminally negligent homicide).

32. A person acts recklessly with respect to the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the result will occur. *Id.* § 6.03(c). A person acts with criminal negligence with respect to the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the result will occur. *Id.* § 6.03(d).

33. Criminally negligent homicide is a lesser-included offense of manslaughter because the two offenses differ only in that criminally negligent homicide requires a less-culpable mental state. *Stadt v. State*, 182 S.W.3d 360, 364 (Tex. Crim. App. 2005).

34. There are three so-called "conduct elements" that may be involved in an offense: (1) the nature of the conduct (2) the result of the conduct, and (3) the circumstances surrounding the conduct. *McQueen v. State*, 781 S.W.2d 600, 603 (Tex. Crim. App. 1989).

35. In a jury charge, the language in regard to the culpable mental state must be tailored to the conduct elements of the offense. *Price v. State*, 457 S.W.3d 437, 441 (Tex. Crim. App. 2015).

36. For nature-of-the-conduct offenses, specific acts are criminalized because of their very nature, and the culpable mental state must apply to committing the act itself. *McQueen*, 781 S.W.2d at 603.

37. In result-of-the-conduct offenses, unspecified conduct is criminalized because of its result, so the culpable mental state must apply to that result. *Id.*

38. In circumstances-surrounding-the-conduct offenses, otherwise innocent behavior is criminalized because of the circumstances under which it is done, and the culpable mental state must apply to those surrounding circumstances. *Id.*

39. Manslaughter and criminally negligent homicide are result-oriented offenses, meaning that a jury charge must apply the respective mental states to the results of the defendant's actions—namely, the death of an individual. *Britain v. State*, 412 S.W.3d 518, 520 (Tex. Crim. App. 2013) (explaining that manslaughter is result-oriented); *Stinecipher v. State*, 438 S.W.3d 155, 161–62 (Tex. App.—Tyler 2014, no pet.) (explaining the same regarding criminally negligent homicide).

40. Aggravated assault causing bodily injury is also a result-oriented offense, the result being bodily injury to an individual, so the mental state must apply to that result. *Garfias v. State*, 424 S.W.3d 54, 60–61 (Tex. Crim. App. 2014).

Findings and Conclusions Regarding
Paragraph 36 of the Application

41. In paragraph 36 of the Application, Rion lists facts that he claims were necessarily decided in the homicide case. Application 20–21, ¶ 36. Among these are the following:

- Rion was speeding 31 miles-per-hour over the speed limit;
- he failed to drive in a single lane of traffic;
- he drove over the median;
- he collided with Loehr and Parnell's vehicle;
- Loehr suffered injuries from the collision; and
- Parnell suffered severe injuries that proved fatal.

See id.

42. Rion then argues that these facts "form an essential element" of the aggravated-assault case and claims that "[u]nder collateral estoppel, these elements cannot again be litigated between the State and Defendant." Application 21–22, ¶¶ 37, 41.

43. However, the Court finds that collateral estoppel does not apply to any of these facts, and any of them may be relitigated in the aggravated-assault case.

44. Rion has failed to carry his burden to show that any of the facts listed in paragraph 36 were the ultimate issue in the homicide trial. *See Sauceda*, 980 S.W.2d at 645. An *ultimate issue* is one that is "the only rationally conceivable issue in dispute in the first prosecution . . . ." *See York*, 342 S.W.3d at 545–46.

45. The facts listed in paragraph 36 were not in dispute—rather, the State and Rion agreed to them. A review of the closing arguments from both sides shows that Rion's identity, his conduct, and the cause of Parnell's death were not in dispute. *See* Rion's Appendix for Reporter's Record 364–404.

46. In contrast, Rion and the State spent plenty of time arguing about Rion's mental state, but none about these other issues. *See id.* Because the facts discussed in paragraph 36 were not at issue in the homicide trial, they could not have been the ultimate issue in the case.

47. Along similar lines, Rion has not carried his burden to show that these facts were decided in his favor. *See Watkins*, 73 S.W.3d at 268. Because the facts in paragraph 36 were uncontested, they were not decided in either party's favor, and collateral estoppel will not bar future litigation concerning those facts. *See id.*

48. The Court finds that none of the facts that Rion outlines in paragraph 36 of the Application are subject to collateral estoppel. With respect to those allegations, habeas relief is denied.

Findings and Conclusions Regarding the Mental-State Issue

49. Rion also alleges that the doctrine of collateral estoppel bars the State from litigating his mental state in the aggravated-assault case.

50. The Court finds, however, that Rion fails to carry his burden of proof with respect to this allegation.

51. The issue of whether Rion disregarded a substantial and unjustifiable risk that Parnell would die as a result of his conduct is different from the issue of whether Rion disregarded a substantial and unjustifiable risk that Loehr would suffer bodily injury as a result of his conduct.

52. As noted above, for collateral estoppel to apply to an issue, that issue must be "precisely" the same in the first and second trials—meaning that the doctrine is limited to "cases where the legal and factual situations are identical." *Taylor*, 101 S.W.3d at 441 (internal quotations and citations omitted).

53. To carry his burden of proof, "the defendant must 'prove both that the issues are identical . . . .'" *McNeil*, 223 S.W.3d at 30 (quoting *Ladner*, 780 S.W.2d at 258). Rion has not done so.

54. Rion's claim fails because the mental-state issues will be different in the aggravated-assault trial because the prohibited result is different.

55. To prove his claim, Rion relies on three result-oriented offenses: manslaughter, criminally negligent homicide, and aggravated assault causing bodily injury. *Garfias*, 424 S.W.3d at 60–61 (explaining that aggravated assault causing bodily injury is result-oriented); *Britain*, 412 S.W.3d at 520 (explaining the same regarding manslaughter); *Stinecipher*, 438 S.W.3d at 161–62 (explaining the same regarding criminally negligent homicide).

56. In result-oriented offenses, the mental states *reckless* and *criminal negligence* both require the existence of a "substantial and unjustifiable risk"—which refers to the "risk that . . . the result will occur. Tex. Penal Code § 6.03(c)–(d).

57. In result-oriented offenses, the mental state never exists alone: It applies to the prohibited result and must be considered alongside that result. *See id.* Put another way, the jury does not consider the mental-state issue in the abstract—it rather considers whether the mental state applies to the prohibited result specifically. *McQueen*, 781 S.W.2d at 603.

58. Reviewing a collateral-estoppel claim requires the court to examine the earlier proceedings to determine what issues were necessarily decided by the factfinder. *Ashe*, 397 U.S. at 444.

59. In the homicide trial, the jury considered manslaughter and criminally negligent homicide. Manslaughter and criminally negligent homicide are, naturally, forms of criminal homicide. Tex. Penal Code § 19.01(b). The prohibited result in both offenses is causing the death of an individual, and the only difference between the two is the mental state. *Id.* §§ 19.04(a), 19.05(a).

60. For manslaughter, therefore, the court's charge must instruct the jury to consider whether the defendant caused the death of an individual recklessly; and for criminally negligent homicide, the court's charge should instruct the jury to consider whether the defendant caused the death of individual by criminal negligence. For these result-oriented offenses, the court's charge should instruct the jury to apply the mental state to the prohibited result: causing the death of an individual.

61. And in the homicide trial, this Court's charge included those necessary instructions. The application paragraph regarding manslaughter instructed the jury to consider whether Rion did "recklessly cause the death" of Parnell, and the application paragraph on criminally negligent homicide instructed the jury to consider whether Rion did "with criminal negligence cause the death" of Parnell. Court's Charge 3, 5.

62. The jury answered both questions in the negative: Through its verdict, it indicated that it did not find beyond a reasonable doubt that Rion caused the death of Parnell by recklessness or criminal negligence. Even assuming that the verdict turned on Rion's mental state, it reflects conclusions about the mental state applied to the one prohibited result—causing Parnell's death—and no other result.

63. Rion asks this Court to bar the State from litigating the mental-state issue in the aggravated-assault case, but this Court cannot do so.

64. Rion's argument extrapolates too much from the jury's verdict. He claims that "the jury already found that [Rion] did not act recklessly. So even if a future jury were to find that [Rion] acted recklessly or with criminal negligence, facts that support such a finding were already found in the negative by the prior jury." Application 22, ¶ 42 (emphasis omitted).

65. But contrary to Rion's claim, the jury did not deliberate on whether Rion "*acted* recklessly or with criminal negligence"—it rather considered whether he recklessly or with criminal negligence *caused the death of an individual*. That question is narrower, so the scope of issues subject to collateral estoppel is narrower too.

66. Rion's argument seems to assume that manslaughter and criminally negligent homicide are nature-of-the-conduct offenses, as if the jury had been asked whether the very nature of Rion's conduct was reckless or criminally negligent. If that were true, then perhaps the State would be barred from relitigating Rion's mental state as applied more generally to the nature of his conduct. But as mentioned above, the jury charge in the homicide case correctly instructed the jury to apply the mental state to the prohibited result: namely, the death of Parnell. Court's Charge 3, 5.

67. Because the mental-state issue in the homicide trial was applied to the risk of death to an individual, the jury's verdict will have no bearing on the aggravated-assault case.

68. Like manslaughter and criminally negligent homicide, aggravated assault is a result-oriented offense. *Garfias*, 424 S.W.3d at 60–61.

69. But with aggravated assault, unlike those other offenses, the prohibited result is merely causing bodily injury to another rather than death. Tex. Penal Code § 22.02(a)(1). The court's charge will therefore instruct the jury to consider whether Rion intentionally, knowingly, or recklessly caused bodily injury to Loehr.

70. Mental states, when applied to different results, mean different things. Recklessness and criminal negligence come down to whatever the "substantial and unjustified risk" is. *See id.* § 6.03(c)–(d).

71. In the homicide trial, that risk was Parnell's death; in the aggravated-assault trial, that risk will be bodily injury to Loehr.

72. *Bodily injury* means physical pain, illness, or any impairment of physical condition. *Id.* § 1.07(a)(8). This definition is "purposefully broad and seems to encompass even relatively minor physical contacts . . . . In fact, the degree of injury sustained by a victim and the type of violence utilized by an accused appear to be of no moment." *Reyes v. State*, 83 S.W.3d 237, 239 (Tex. App.—Corpus Christi 2002, no pet.) (quoting *Lewis v. State*, 530 S.W.2d 117, 118 (Tex. Crim. App. 1975)) (internal quotation omitted).

73. *Bodily injury*, then, includes a nearly infinite variety of outcomes that are harmful, even if they stop short of causing death. So assuming *arguendo* that the first jury concluded that Rion's conduct did not carry a substantial and unjustifiable risk of death, collateral estoppel will not bar the State from arguing that the same conduct nevertheless carried a substantial and unjustifiable risk of bodily injury.

74. The Court finds that collateral estoppel does not prevent the State from litigating Rion's mental state in the aggravated-assault case. With respect to that claim, habeas relief is denied.

Part 6

75. In part 6, Rion claims that he could not have committed aggravated assault with a deadly weapon because the manner and means of his use of his vehicle could not have facilitated any felony.

76. In response, the State argues that Rion actually asks this Court to test whether the evidence will be legally sufficient to convict him, and that the issue is not cognizable in a pretrial application for a writ of habeas corpus.

Cognizability of Habeas Claims

77. The writ of habeas corpus is an extraordinary writ, and it is not the appropriate vehicle for all claims. *Ex parte Weise*, 55 S.W.3d 617, 619 (Tex. Crim. App. 2001). *Cognizability* is the term that describes whether a claim may be brought on habeas, and it is determined by the type of claim. *See id.* at 619–20.

78. Cognizability is a threshold issue—no court should address the merits of a habeas claim before it decides that the type of claim is cognizable on habeas. *Ex parte Smith*, 178 S.W.3d 797, 801 (Tex. Crim. App. 2005).

79. Pretrial habeas applications, in particular, may only be used in "very limited circumstances." *Ex parte Smith*, 178 S.W.3d 797, 801 (Tex. Crim. App. 2005).

80. These limited circumstances do not include a review of the sufficiency of the evidence after a case has been indicted but before the case has been submitted to a trier of fact. *Ex parte Queen*, 877 S.W.2d 752, 755 (Tex. Crim. App. 1994) (citing *Lofton v. State*, 777 S.W.2d 96, 97 (Tex. Crim. App. 1989)).

81. There is only one exception to this rule: The Court of Criminal Appeals has held that if a motion for new trial was granted specifically based on the insufficiency of the evidence, then a court may consider the sufficiency of the evidence via a pretrial writ of habeas corpus in order to protect a defendant's right against double jeopardy. *Id.* (citing *Lofton*, 777 S.W.2d at 97).

82. But otherwise, the only way for a defendant to challenge the sufficiency of the evidence in an indicted case is to take that case to trial. *See id.*

Findings and Conclusions Regarding Part 6

83. Rion asks this Court to review the evidence to determine whether his vehicle, in the manner and means of its use, meets the definition of a deadly weapon and whether it could have facilitated a felony. Application 22–29.

84. This Court declines to do so because it finds that this issue is not cognizable in a pretrial application for a writ of habeas corpus.

85. Throughout Part 6 of the Application, Rion invokes the issue of the legal sufficiency of the evidence. One example is found in paragraph 46 of the application:

> Thus, to make a legally sufficient finding of the use of a deadly weapon, the question becomes the manner in which [Rion] used his vehicle in the accident. As the following review of cases will show, the State failed to prove beyond a reasonable doubt that the manner of [Rion]'s use of the vehicle or its intended use was capable of causing death or serious bodily injury.

Application 24, ¶ 46.

86. Applicant then cites caselaw applying the law on legal sufficiency. *See* Application 23–28 (citing *Sierra v. State*, 280 S.W.3d 250, 255 (Tex. Crim. App. 2009); *Balderas v. State*, No. 13-11-00522-CR, 2012 WL 2469642 (Tex. App.—Corpus Christi June 28, 2012, no pet.) (mem. op., not designated for publication); *Sheridan v. State*, 950 S.W.2d 755 (Tex. App.—Fort Worth 1997, no pet.); *English v. State*, 828 S.W.2d 33 (Tex. App.—Tyler 1991, pet. ref'd)).

87. However, the legal sufficiency of the evidence is an issue for an appellate court to consider after a defendant has been convicted—it is not for a trial court to consider before trial. *See Queen*, 877 S.W.2d at 755 (citing *Lofton*, 777 S.W.2d at 97).

88. The Court finds that this issue is not cognizable, and habeas relief is denied on this ground.

Part 7

89. In part 7, Rion points out that he requested for both cases to be tried in one proceeding but that his request was denied. It is unclear whether Rion makes this assertion as a freestanding ground for relief or whether it is to support his collateral-estoppel argument.

90. In response, the State argues that Rion's request for one trial has no bearing the collateral-estoppel analysis and does not otherwise bar the State from prosecuting the instant aggravated-assault case.

91. Citing *Currier v. Virginia*, 138 S. Ct. 2144 (2018), Rion claims that "a defendant who moves for or agrees to a severance of charges may not successfully argue that a second trial violates the Double Jeopardy Clause." Application 32, ¶ 66 (emphasis omitted).

92. This statement is correct, but it has no bearing here.

93. In *Currier*, the defendant himself requested that two cases be tried separately, and the trial court granted his request, meaning that the defendant was barred from claiming that the second trial violated the Double Jeopardy Clause. *Currier*, 138 S. Ct. at 2151. *Currier*, in other words, applied estoppel against the defendant rather against than the State: After requesting and receiving two trials, the defendant could not later raise a double-jeopardy complaint via *Ashe* when it came time for the second case to go to trial. *Id.*

94. Rion, however, did not successfully request two trials—he unsuccessfully requested one trial—so *Currier* does not apply here.

95. Rion maintains that *Currier* does apply to him. He seems to argue that, merely by requesting one joint trial rather than two separate ones, he can place the State in a vice: Either the State acquiesces to a joint trial (even if the trial court does not grant his request), or the State will be forever barred from bringing the second case to trial.

96. *Currier*, however, does not support that novel theory, and Rion fails to cite any authority that does.

97. The Court finds that *Currier* does not apply here, either as a freestanding ground for relief or as support for Rion's collateral-estoppel claim. Habeas relief is denied on this ground.

CONCLUSION

The Application is DENIED on all grounds.

Respectfully submitted,

JOHN CREUZOT
Criminal District Attorney
Dallas County, Texas

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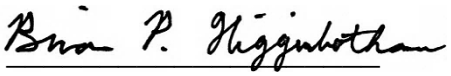
CERTIFICATE OF SERVICE

I certify that a true copy of this document was served on Kirk F. Lechtenberger and Michael Mowla as counsel for Rion on April 17, 2019. Service was via electronic service to kflechlawyer@gmail.com and michael@mowlalaw.com.



Brian P. Higginbotham

WX18-90101-L
F15-72104-L

THE STATE OF TEXAS	§	IN THE CRIMINAL
	§	
v.	§	DISTRICT COURT NO. 5
	§	
CHRISTOPHER RION	§	DALLAS COUNTY, TEXAS

ORDER ADOPTING STATE'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court hereby adopts and incorporates herein the State's Proposed Findings of Fact and Conclusions of Law, which were filed on April 17, 2019.

The Clerk is hereby **ORDERED** to send a copy of the Findings of Fact and Conclusions of Law, and this Order, to Applicant's counsel and to counsel for the State.

BY THE FOLLOWING SIGNATURE, THE COURT ADOPTS THE STATE'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW IN CAUSE NOS. WX18-90101-L AND F15-72104-L.

SIGNED AND ENTERED this _____ day of _____, 2019.

_____
Presiding Judge
Criminal District Court No. 5
Dallas County, Texas